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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 LAURA LESKINEN,

11 Plaintiff,

No. 2:10-cv-03363 MCE KJN PS

12 v.

13 CAROLYN A. HALSEY, et al.,

14 Defendants.

ORDER

15
16 Presently before the court are several ex parte requests or ex parte motions filed
17 by plaintiff. Each request or motion is addressed below.

18 First, plaintiff requests permission from the court to use a “table format” in part of
19 her already-filed, 27-page opposition (excluding exhibits) to the motion to dismiss filed by
20 defendants Joe Nemeth and Pinks, Arbeit, and Nemeth (“Nemeth Defendants”). (See Dkt.
21 Nos. 42, 78, 82.) Plaintiff need not seek leave of court to use such a format. Accordingly,
22 plaintiff’s request is denied as moot.

23 Second, plaintiff requests an order of the court prohibiting any of the defendants
24 from filing any motions during the month of September 2011. (Dkt. No. 80.) Many of the 14
25 named defendants recently filed motions to dismiss on jurisdictional and venue grounds, or
26 notices of joinder in such motions. (Dkt. Nos. 26-31, 42, 45, 55, 57, 65, 67, 69, 71-73.)

1 Plaintiff's ex parte request is summarily denied. Plaintiff chose to sue 14 defendants, and
2 plaintiff has cited no legal basis to prevent these defendants from defending themselves in this
3 action, including by the filing of pleadings-based motions permitted under the Federal Rules of
4 Civil Procedure. Curiously, plaintiff makes this request despite having filed at least 13 motions
5 or requests between July 21, 2011, and August 23, 2011. (Dkt. Nos. 43, 46-50, 56, 61, 63, 76,
6 79, 80, 82.)

7 Third, plaintiff requests that the hearing on the Nemeth Defendants' motion to
8 dismiss be continued from September 8, 2011, to September 15, 2011. (Dkt. No. 80.) Plaintiff is
9 concerned that defendants Robert Whitman, Sr., Robert Whitman, Jr., and Carolyn Halsey filed
10 notices of joinder in the Nemeth Defendants' motion on August 15, 2011. (Dkt. Nos. 65, 67,
11 69.) Plaintiff's request is denied only as to the Nemeth Defendants' motion to dismiss.
12 However, because Robert Whitman, Sr., Robert Whitman, Jr., and Carolyn Halsey filed their
13 notices of joinder in violation of the proper notice period provided in Local Rule 230, plaintiff
14 need not separately respond to those defendants' notices of joinder in advance of the September
15 8, 2011 hearing. In any event, Robert Whitman, Sr., Robert Whitman, Jr., and Carolyn Halsey
16 previously noticed a hearing on their respective motions to dismiss—filed separately from their
17 notices of joinder in the Nemeth Defendants' motion—that will take place on October 6, 2011.
18 (Dkt. Nos. 26-31, 57.) Plaintiff shall file written oppositions or statements of non-opposition to
19 the Whitmans' and Halsey's motions in accordance with Local Rule 230 and based on the current
20 hearing date of October 6, 2011.

21 Fourth, plaintiff requests that the court continue the September 15, 2011 hearing
22 date on the motion to dismiss filed by defendants Ken Warner and Landstar Title Agency, Inc.
23 ("Landstar") to September 22, 2011. (Dkt. Nos. 45, 80.) For the sake of efficiency, the
24 undersigned continues the September 15, 2011 hearing on its own motion. The September 15,
25 2011 hearing on Warner and Landstar's motion to dismiss shall be heard on October 6, 2011,
26 along with nine other motions to dismiss that are presently scheduled to be heard on October 6,

1 2011. Plaintiff shall file a written opposition or statement of non-opposition to Warner and
2 Landstar's motion to dismiss in accordance with Local Rule 230 and based on the current hearing
3 date of October 6, 2011. In light of the continued hearing date, plaintiff's request is denied as
4 moot.

5 Fifth, plaintiff requests that the court enter an order, pursuant to Federal Rule of
6 Civil Procedure 5(c)(1)(A), providing that the defendants in this case be relieved from serving
7 their respective pleadings and responses to plaintiff's Second Amended Complaint on the other
8 defendants. (Dkt. No. 43.) Plaintiff's request is denied because several of the defendants
9 appearing in this case are proceeding without counsel and do not receive electronic service of the
10 filings in this case through the court's CM/ECF filing system.

11 Finally, plaintiff requests an order of the court, pursuant to Federal Rule of Civil
12 Procedure 4(c)(3), directing the U.S. Marshal to serve the summons and Second Amended
13 Complaint on defendants Mike Carroll and Marketplace Realty. (Dkt. No. 79.) Plaintiff seeks
14 this relief on the grounds that: (1) "the Suffolk County, NY Sheriff's Department has been
15 derelict in their contracted duty to serve those defendants;" and (2) the 120-day time limit for
16 service of the summons and complaint will expire on September 5, 2011. Rule 4(c)(3) provides:
17 "At the plaintiff's request, the court may order that service be made by a United States marshal or
18 deputy marshal or by a person specially appointed by the court. The court must so order if the
19 plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915" Fed. R. Civ. P.
20 4(c)(3). As an initial matter, plaintiff's status as a party proceeding in forma pauperis was
21 revoked after plaintiff paid the required filing fee in this case¹ (Order, June 8, 2011, Dkt. No. 17),
22 and, as a result, the court is not under a mandatory obligation to order service by the U.S.
23 Marshal. Additionally, plaintiff has not demonstrated why she cannot effectuate service by
24 means other than the U.S. Marshal, such as a private process server. Accordingly, plaintiff's

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26 ¹ Plaintiff voluntarily paid the \$350 filing fee despite previously declaring under penalty
of perjury that she was unable to pay the fee or provide security for the fee.

1 request for an order directing the U.S. Marshal to serve the summons and Second Amended
2 Complaint on defendants Mike Carroll and Marketplace Realty is denied. However, for good
3 cause shown, the undersigned extends the time for service provided in Rule 4(m), and plaintiff
4 shall have an additional 90 days from September 5, 2011, to effectuate service on defendants
5 Mike Carroll and Marketplace Realty.

6 In light of the foregoing, IT IS HEREBY ORDERED that:

7 1. Plaintiff's ex parte request for permission to use a "table format" in part of
8 her written opposition to the Nemeth Defendants' motion to dismiss (Dkt. No. 82) is denied as
9 moot.

10 2. Plaintiff's ex parte request for an order of the court prohibiting any of the
11 defendants from filing any motions during the month of September 2011 (Dkt. No. 80) is denied.

12 3. Plaintiff's ex parte request to continue the hearing on the Nemeth
13 Defendants' motion to dismiss from September 8, 2011, to September 15, 2011 (Dkt. No. 80) is
14 granted in part and denied in part. Plaintiff's request is denied as to the Nemeth Defendants, and
15 the Nemeth Defendants' motion to dismiss will remain on calendar for September 8, 2011.

16 However, plaintiff need not separately respond to the untimely notices of joinder in the Nemeth
17 Defendants' motion filed by defendants Robert Whitman, Sr., Robert Whitman, Jr., and Carolyn
18 Halsey. Separately filed motions to dismiss filed by the Whitmans and Halsey are presently set
19 for a hearing date of October 6, 2011, and plaintiff shall file written oppositions or statements of
20 non-opposition to the Whitmans' and Halsey's motions in accordance with Local Rule 230 and
21 based on the current hearing date of October 6, 2011.

22 4. Plaintiff's request that the court continue the September 15, 2011 hearing
23 on the motion to dismiss filed by defendants Ken Warner and Landstar Title Company to
24 September 22, 2011 (Dkt. No. 45) is denied as moot. The court, on its own motion, continues
25 the September 15, 2011 hearing on Warner and Landstar's motion to October 6, 2011. Plaintiff
26 shall file a written opposition or statement of non-opposition to Warner and Landstar's motion to

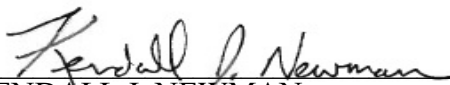
1 dismiss in accordance with Local Rule 230 and based on the current hearing date of October 6,
2 2011.

3 5. Plaintiff's request that the court enter an order providing that the
4 defendants in this case be relieved from serving their respective responsive pleadings or other
5 responses to plaintiff's Second Amended Complaint on the other defendants (Dkt. No. 43) is
6 denied.

7 6. Plaintiff's request for a court order directing the U.S. Marshal to serve the
8 summons and Second Amended Complaint on defendants Mike Carroll and Marketplace Realty
9 (Dkt. No. 79) is denied. However, pursuant to Federal Rule of Civil Procedure 4(m) and for
10 good cause shown, plaintiff shall have an additional 90 days from September 5, 2011, to
11 effectuate service on defendants Mike Carroll and Marketplace Realty.

12 IT IS SO ORDERED.

13 DATED: August 25, 2011

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16 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE